'servant'. The important words are 'being about my business'.

The real difficulty, of course, is not in stating the law. The difficulty lies in the application of the law to the facts of any individual case."

Counsel for the second defendant argued that she had parted with her car unconditionally, retaining neither control nor the right to exercise any control over it and as this was a clear case of bailment, she should not be held liable for the first defendant's negligence.

Having given this matter anxious consideration, I regret that I do not agree. In my judgment, the learned trial judge was right in holding the second defendant vicariously liable for the first defendant's negligence. The second defendant wanted to sell her car, she had agreed the price with the intending purchaser (the first defendant) and it was to her advantage that she should allow him to test-drive the car for one or two days. When the accident happened, the first defendant was driving the car partly, if not wholly, on the owner's business or for the owner's purposes, the test used by Lord Denning in *Ormrod.*[2] Unlike the owner in *Hewitt* v. *Bonvin,*[1] the owner here had not lent the car to the first defendant to be used for purposes in which she had no interest or concern. She had every interest and every concern in persuading the first defendant to believe that the car was worth the price agreed and thus complete the deal.

I would therefore dismiss this appeal with costs.

Azmi L.P. and **MacIntyre F.J.** concurred.

Appeal dismissed.

Solicitors: *Mah & Kok; D.A. Devadason.*

BANKERS & TRADERS INSURANCE CO. LTD. v. ALLIED INSURANCE SERVICES

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Choor Singh J.) December 11, 1968]

[Singapore — Federal Court Civil Appeal No. Y28 of 1968]

Agency — Insurance agents — Appointment as — Whether there was consideration for giving guarantee and indemnity.

Insurance — Premiums collected by agents — Claim for money received by defendant for use of plaintiff.

The appellants (plaintiffs in the court below) claimed for the sum of $4,028.78 being money alleged to be payable by the respondents to the appellants for money received by the respondents for the use of the appellants, being balance due in respect of insurance premiums collected by the respondents for and on behalf of the appellants. In the alternative the appellants alleged that by a letter dated March 14, 1964, the respondents were appointed their agents and that in consideration thereof, *inter alia,* the respondents guaranteed in favour of the appellants the payment of all premiums due in respect of policies issued through the respondents' agency, and further that the sum of $4,028.78 was due to the appellants from the respondents in respect of such premiums.

Held, allowing the appeal: (1) on the facts of the case there was consideration for the giving of the guarantee or indemnity;

(2) an order for the necessary accounts and inquiries be taken by the registrar.

FEDERAL COURT.

Lee Boon Siong for the appellants.

J.B. Jeyaretnam for the respondents.

Cur. Adv. Vult.

Tan Ah Tah F.J. (delivering the judgment of the court): The plaintiffs' claim in this case is for the sum of $4,028.78 being money alleged to be payable by the defendants to the plaintiffs for money received by the defendants for the use of the plaintiffs, being the balance due in respect of insurance premiums collected by the defendants in Singapore and Malaya for and on behalf of the plaintiffs. In the alternative the plaintiffs allege that by a letter dated the 14th March 1964 the defendants were appointed insurance agents for the plaintiffs and that in consideration, *inter alia,* of their appointment as agents, the defendants guaranteed in favour of the plaintiffs the payment of all premiums due in respect of policies issued through the defendants' said agency, and further that the sum of $4,028.78 was due to the plaintiffs from the defendants in respect of such premiums.

At the hearing of the action in the court below, the learned trial judge was asked by counsel for both parties to decide the following issues:—

(1) Does the letter of appointment dated the 14th March 1964 contain a guarantee?

(2) If it does, was there sufficient consideration moving from the plaintiffs?

By his judgment the learned trial judge held that the letter of appointment dated the 14th March 1964 did not contain a guarantee by the defendants and even if there was a guarantee there was no valuable consideration for the guarantee. It is against this judgment that the plaintiffs have brought this appeal.

It is not disputed that by the letter dated the 14th March 1964 which was written by the plaintiffs to the defendants, the defendants were appointed insurance agents for the plaintiffs. The terms and conditions of the agency were set out in the said letter of appointment. One of the paragraphs (hereinafter referred to as "paragraph 3") of the letter reads as follows:—

"You may allow credit for a period not in excess of 90 days and upon the expiration of such credit period, the premiums, if not paid, by the insured will be your liability."

The defendants accepted all the terms and conditions by signing an endorsement at the foot of the letter. This endorsement reads as follows:—

"I accept the appointment and undertake to adhere strictly to the terms and conditions thereof."

Counsel for the defendants has submitted that it is essential for the court to decide whether paragraph 3 contains a guarantee or an indemnity because he contends that on the pleadings and the agreed issues before the learned trial judge the defendants must succeed if paragraph 3 contains an indemnity. In our view, whether it is a guarantee or an indemnity is not relevant. What is relevant and has to be decided is whether there was consideration for the giving of the guarantee or indemnity.

On the question whether there was consideration, it is necessary to consider whether any detriment was suffered by the plaintiffs or any benefit accrued to the defendants. It is clear that on the one hand, detriment was suffered by the plaintiffs in that they have to keep the insured covered against risks for a period which may be as long as 90 days without receiving anything by way of premium. There was also a contingent liability on the part of the plaintiffs to meet claims on policies in respect of which no premiums have yet been received by them. On the other hand, there was a benefit to the defendants in having the authority to allow credit for a period which may be as long as 90 days, and also in being able thereby to increase the volume of insurance business transacted by them. In our opinion, it is clear that there was consideration for the giving of the guarantee or indemnity by the defendants to the plaintiffs.

Counsel for the defendants has pointed out that the plaintiffs have not alleged in their statement of claim that the defendants gave an indemnity to the plaintiffs. In considering this point, it must be remembered that what we have to decide is essentially a question of law, the question being, as we have stated, whether there was consideration for the giving of the guarantee or indemnity. In the particular circumstances of this case we are of the view that the pleadings and the letter dated the 14th March 1964 contain sufficient material to enable us to decide the matter and that no amendment of the statement of claim is necessary.

In the result the appeal is allowed with costs here and below. There will be an order for the necessary accounts and inquiries to be taken by the registrar.

Appeal allowed.

Solicitors: *Drew & Napier; J.B. Jeyaretnam & Co.*

ONG SIM MOY & ORS. v. ONG SIM HOE

[O.C.J. (Winslow J.) December, 13, 1968]
[Singapore — Suit No. 1526 of 1966]

Negligence — Highway — Accident — Road junction — Collision between vehicles at junction where one vehicle emerges from a minor road into the path of traffic coming from its right on a major road — "Halt" sign at junction — Duty to stop at junction and allow vehicle on major road to pass.

The facts in this case were that the deceastd cyclist was killed in an accident which occurred at the junction of Jalan Kayu and Yio Chu Kang Road. There was a "halt" sign at the mouth of Jalan Kayu. The defendant was driving a lorry along Yio Chu Kang Road and collided with the bicycle.

Held: in the circumstances, the deceased cyclist was clearly to blame for the accident even assuming that he previously stopped at the "halt" line, for the cyclist should have seen the lorry approaching from his right and waited a little longer to ensure that the major road was safe to turn into before he proceeded to turn right.

Cases referred to:—

(1) *Lang* v. *London Transport Executive & Anor.* [1959] 3 All E.R. 609.

(2) *Brooks* v. *Graham & Barrington* (1964), English Court of Appeal Case (unreported).

(3) *Mohamed Repin* v. *Lim Yu Kee*, *ante* p. 64.

CIVIL SUIT.

N.A. Christopher for the plaintiffs.

G. Abisheganaden for the defendant.

Cur. Adv. Vult.

Winslow J.: For the purposes of this case I have made a careful examination of the authorities on the subject of collisions between vehicles at junctions where one vehicle emerges from a minor road into the path of traffic coming from its right on a major road. In the case of *Lang* v. *London Transport Executive & Anor.*[1] a motor cyclist emerged from a minor side road on to a major road and collided at the junction of the two roads with an omnibus travelling along the major road. There was a traffic sign 180 feet from the mouth of the side road indicating *"Slow. Major Road Ahead"*. The motor cyclist was killed and it was held that, although the cyclist was highly negligent, the bus driver was nevertheless one-third to blame because the possibility of danger was reasonably apparent and the bus driver had not taken the precaution of looking at the traffic in the side road to see whether the deceased was still moving at 20 m.p.h. but obviously intending to cross or whether he was slowing down and going to wait for traffic in the major road.

In the present case, however, I have to deal not with a *"Slow"* sign but a *"Halt"* sign indicating a major road ahead. As Lord Justice Willmer said in the case of *Brooks* v. *Graham and Berrington*[2] (a 1964 English Court of Appeal Case which is unreported) but whose judgment was referred to by Chua J. in *Mohamed Repin* v. *Lim Yu Kee*:—[3]